

HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPL. NO. 1105 OF 2007.
IN
WRIT PETITION NO. 8481 OF 2005.

The State of Maharashtra & Others. ..Applicants.

V E R S U S

Suhas S. Damdhere & others. ..Respondents.

Mr. C. R. Sonawane AGP for the applicant.

Mr. P. B. Shah for the respondents.

CORAM: S.B.MHASE & D.G.KARNIK, JJ.

DATE : OCTOBER 26, 2007.

P.C.

1. Heard. This civil application has been filed by the Government for vacating the order of ad-interim passed by this Court on 7th September 2006 (Exhibit-"I").

2. The petitioner in this petition is challenging the land acquisition proceedings. After hearing the petitioner the petition has been admitted by an order dated 7th September 2006, (Coram: S.Radhakrishnan & V.M. Kanade, JJ.). By that order the Court also granted ad-interim relief in terms of prayer clause (a), i.e., preventing respondents from taking possession of the property. However, the

respondents were permitted to proceed with the land acquisition proceedings save and except taking possession.

3. Learned AGP Mr. C. R. Sonawane submitted that thereafter the State has proceeded with the acquisition, and has issued notice under section 12(2) of the Land Acquisition Act (for short, "the Act"). He therefore prays that ad-interim relief be vacated so the State can take possession of the acquired property.

4. We have heard learned AGP and counsel for the petitioner. Counsel for the petitioner submitted that the entire land acquisition proceedings are vitiated as the enquiry under section 5A of the Act has not been held. On our query, learned AGP submitted that the notification under section 4(1) of the Act was served on the petitioner on 25th June 2005 and enquiry under section 5A was held on 1st July 2005. Section 5A contemplates one month's notice to be given to the owner for raising the objections to the acquisition. Since notice under section 4(1) of the Act was served on 25th June 2005 the petitioner had time to raise objections upto 24th July 2005. Inquiry under section 5A could not have been held before 24th July 2005. We are therefore prima facie satisfied that the inquiry allegedly held on 1st July 2005 is not in accordance with law and/or

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is a farce as contended by the petitioner. In the circumstances we see no reason to modify the order passed by this Court granting ad-interim relief. Civil Application is accordingly rejected.

5. State is however at liberty to rectify the defects in the acquisition proceedings, if any, and proceed in accordance with law after rectifying the defects.

(D.G.KARNIK, J.)

(S.B.MHASE, J.)